REMARKS

Favorable reconsideration and allowance of the present application are respectfully requested in view of the foregoing amendments and the following remarks.

Currently, claims 113-129 are pending in the present application, including independent claim 113. Independent claim 113, for instance, is directed to a diagnostic device having a housing that defines i) a first opening for receiving a sample, ii) a first chamber into which the sample may be directed, iii) a first channel positioned to provide unreacted sample from the first opening to the first chamber, iv) a second channel positioned to remove unreacted sample from the first chamber, and v) a second opening for reacting the sample. A test strip is removably attached to the housing at the second opening. The test strip defines a test surface in fluid communication with the first chamber by the second opening so that the sample may be reacted. A second chamber is positioned for receipt of unreacted sample from the first chamber. The second chamber is in fluid communication with the second channel. The device also includes means for inducing a negative pressure differential on the sample to direct the sample through the first channel, into the chamber, to the test surface, and to thereafter remove an unreacted portion of the sample from the test surface, through the second channel, and into the second chamber.

In the Office Action, all pending claims 95-112 were rejected under *35 U.S.C. § 102(b)* as being anticipated by U.S. Patent No. 5,677,133 to Oberhardt. Oberhardt is directed to a method for performing an affinity assay comprising: (1) contacting a sample to be assayed for the presence of an analyte with a dry reagent containing the analyte bound to a reaction cascade initiator, an antibody reactive with the analyte, and

magnetic particles, to form an assay mixture in a reaction chamber; (2) incubating the assay mixture; (3) applying an oscillating or moving static magnetic field to the assay mixture; (4) activating the reaction cascade initiator to initiate a reaction cascade; (5) monitoring the response of the magnetic particles to the oscillating or rotating magnetic field to provide a time varying signal; and (6) determining the analyte concentration of the sample by analysis of the time varying signal. (Col. 4, lines 48-64). Oberhardt describes carrying out its affinity assay method using a reaction slide, such as shown in Figures 1-4.

However, Oberhardt lacks certain limitations of newly presented independent claim 113. Oberhardt indicates the use of a vacuum to cause movement of a sample from a sample well to a reaction chamber. To use such vacuum, Oberhardt uses a liquid impermeable membrane to pull the liquid sample to the reaction chamber without removing the liquid sample from the reaction chamber. More specifically, no additional channel or additional chamber is provided for receipt of the liquid sample from the reaction chamber because the liquid sample is not removed from Oberhardt's reaction chamber. In fact, such liquid could not be removed from Oberhardt's reaction chamber with a vacuum because Oberhardt specifically indicates the placement of a liquid impermeable membrane on vent 76 of the reaction chamber in order to draw a vacuum without removing the liquid sample.

Thus, unlike the limitations of independent claim 113, Oberhardt does not indicate "a second channel positioned to remove unreacted sample from the first chamber" because Oberhardt does not remove liquid sample from the reaction chamber. In addition, unlike the limitations of independent claim 113, Oberhardt does

not indicate "a second chamber positioned for receipt of unreacted sample from the first chamber" because Oberhardt does not remove liquid sample from its reaction chamber. Furthermore, unlike the limitations of independent claim 113, Oberhardt does not have "means for inducing a negative pressure differential on the sample to direct the sample through the first channel, into the chamber, to the test surface, and to thereafter remove an unreacted portion of the sample from the test surface and into the second chamber" because Oberhardt does not remove any sample from its reaction chamber and does not have a second chamber.

Moreover, independent claim 113 also requires a test strip that *defines a test surface* and that is *removably attached* to a housing and is in fluid communication with the first chamber by a second opening formed in the first chamber. In this manner, the test strip may be easily removed for viewing or placement in an analyzer. In contrast, Oberhardt's reaction plate 20 itself defines or forms part of the reaction chamber 62 (Fig. 4A). Unlike claim 113, reaction plate 20 is not removably attached to a housing. Finally, Oberhardt's reaction plate 20 is not attached a housing that comprises a second opening for reacting the sample.

Thus, for at least the reasons set forth above, Applicants respectfully submit that the present claims are not anticipated by Oberhardt. Furthermore, Applicant respectfully submits that some or all of the dependent claims also contain additional limitations not indicated by Oberhardt. By way of example only, claim 117 requires that the means for inducing a negative pressure is a syringe, and claim 118 requires the syringe to have indicators correlated with the rest of the device so as to mark the position of the sample within the device.

It is believed that the present application is in complete condition for allowance and favorable action, therefore, is respectfully requested. Examiner Snay is invited and encouraged to telephone the undersigned, however, should any issues remain after consideration of this Amendment.

Please charge any additional fees required by this Amendment to Deposit Account No. 04-1403.

Respectfully submitted,

DORITY & MANNING, P.A.

Jason W. Johnston
Registration No.: 45,675

DORITY & MANNING, P.A.
P.O. Box 1449
Greenville, SC 29602-1449
Phone: (864) 271-1592
Facsimile: (864) 233-7342

Date: 10/2/06